

EXHIBIT A

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9

10 UNITED STATES DISTRICT COURT
11 CENTRAL DISTRICT OF CALIFORNIA-WESTERN DIVISION
12

13 KAYLA REED, an individual,

14 Plaintiff,

15 v.

16 TOYS "R" US-DELAWARE, INC.,
17 d/b/a BABIES R US; and DOES 1-
18 10, inclusive,

19 Defendants.
20
21

22 Case No. 2:17-cv-01303-AB-JPR
23

**FIRST AMENDED COMPLAINT FOR
DAMAGES AND INJUNCTIVE
RELIEF:**

- 1. VIOLATIONS OF THE
AMERICANS WITH DISABILITIES
ACT OF 1990, 42 U.S.C. §12181 *et
seq.* [BABIESRUS.COM]**
- 2. VIOLATIONS OF THE UNRUH
CIVIL RIGHTS ACT, CALIFORNIA
CIVIL CODE § 51 *et seq.*
[BABIESRUS.COM]**

1 Plaintiff, KAYLA REED (“Plaintiff”), alleges the following upon information
2 and belief based upon personal knowledge:

3 **INTRODUCTION**

4 1. Plaintiff is a visually-impaired and legally blind person who requires
5 screen-reading software to read website content using her computer. Plaintiff uses
6 the terms “blind” or “visually-impaired” to refer to all people with visual
7 impairments who meet the legal definition of blindness in that they have a visual
8 acuity with correction of less than or equal to 20 x 200. Some blind people who
9 meet this definition have limited vision. Others have no vision.

10 2. Plaintiff brings this civil rights action against Defendant TOYS “R”
11 US-DELAWARE, INC., d/b/a BABIES R US (“Defendant” or “Babies R Us”) for
12 its failure to design, construct, maintain, and operate its website to be fully
13 accessible to and independently usable by Plaintiff and other blind or visually-
14 impaired people. Defendant’s denial of full and equal access to its website, and
15 therefore denial of its products and services offered thereby and in conjunction with
16 its physical locations, is a violation of Plaintiff’s rights under the Americans with
17 Disabilities Act (“ADA”) and California’s Unruh Civil Rights Act (“UCRA”).

18 3. Because Defendant’s website, BabiesRUs.com (the “website” or
19 “Defendant’s website”), is not equally or fully accessible to blind and visually-
20 impaired consumers in violation of the ADA, Plaintiff seeks a permanent injunction
21 to cause a change in Defendant’s corporate policies, practices, and procedures so
22 that Defendant’s website will become and remain accessible to blind and visually-
23 impaired consumers.

24 **JURISDICTION AND VENUE**

25 4. This Court has subject-matter jurisdiction over this action pursuant to
26 28 U.S.C. § 1331 and 42 U.S.C. § 12181, as Plaintiff’s claims arise under Title III of
27 the ADA, 42 U.S.C. § 12181, *et seq.*, and 28 U.S.C. § 1332.

28 5. This court has supplemental jurisdiction over Plaintiff’s non-federal

1 claims pursuant to 28 U.S.C. § 1337, because Plaintiff's UCRA claims are so related
2 to Plaintiff's federal ADA claims, they form part of the same case or controversy
3 under Article III of the United States Constitution.

4 6. This Court has personal jurisdiction over Defendant because it conducts
5 and continues to conduct a substantial and significant amount of business in the
6 State of California, County of Ventura, and because Defendant's offending website
7 is available across California.

8 7. Venue is proper in the Central District of California pursuant to 28
9 U.S.C. §1391 because Plaintiff resides in this District, Defendant conducts and
10 continues to conduct a substantial and significant amount of business in this District,
11 Defendant is subject to personal jurisdiction in this District, and a substantial portion
12 of the conduct complained of herein occurred in this District.

PARTIES

14 8. Plaintiff, at all times relevant and as alleged herein, is a resident of
15 California, County of Ventura. Plaintiff is a blind, visually-impaired handicapped
16 person, and a member of a protected class of individuals under the ADA, pursuant to
17 42 U.S.C. § 12102(1)-(2), and the regulations implementing the ADA set forth at 28
18 CFR §§ 36.101 *et seq.*

19 9. Plaintiff is informed and believes, and thereon alleges Defendant TOYS
20 “R” US-DELAWARE, INC., d/b/a BABIES R US is a corporation, incorporated in
21 Delaware and has its principal place of business in Wayne, New Jersey. Defendant
22 is registered to do business in the State of California and has been doing business in
23 the State of California, including the Central District of California. Defendant
24 operates many of its Babies R Us stores (“Babies R Us stores” or “Defendant’s
25 stores” hereinafter) in the Central District of California. These Babies R Us stores
26 constitute places of public accommodation. Defendant’s stores provide to the public
27 important goods and services. Defendant’s website provides consumers with access
28 to an array of goods and services including store locators, product descriptions, gift

1 card sales, baby registry services, in-store event information and many other benefits
2 related to these goods and services.

3 10. The true names and capacities of the Defendants sued herein as DOES
4 through 10, inclusive, are currently unknown to Plaintiff, who therefore sues such
5 Defendants by fictitious names. Each of the Defendants designated herein as a DOE
6 is legally responsible for the unlawful acts alleged herein. Plaintiff will seek leave of
7 Court to amend this First Amended Complaint (“FAC”) to reflect the true names and
8 capacities of the DOE Defendants when such identities become known.

9 11. At all relevant times as alleged herein, each and every Defendant was
10 acting as an agent and/or employee of each of the other Defendants and was acting
11 within the course and/or scope of said agency and/or employment with the full
12 knowledge and consent of each of the Defendants. Each of the acts and/or omissions
13 complained of herein were alleged and made known to, and ratified by, each of the
14 other Defendants (TOYS “R” US-DELAWARE, INC., d/b/a BABIES R US and
15 DOE Defendants will collectively be referred to hereafter as “Defendant” or “Babies
16 R Us”).

17 12. Defendant’s stores are public accommodations within the definition of
18 Title III of the ADA, 42 U.S.C. § 12181(7). BabiesRUs.com is a service, privilege,
19 or advantage of Defendant’s stores.

20 13. Defendant is subject to personal jurisdiction in this District. Defendant
21 has been and is committing the acts or omissions alleged herein in the Central
22 District of California that caused injury, and violated rights prescribed by the ADA
23 and UCRA, to Plaintiff and to other blind and other visually impaired-consumers. A
24 substantial part of the acts and omissions giving rise to Plaintiff’s claims occurred in
25 the Central District of California. Specifically, on several separate occasions,
26 Plaintiff has been denied the full use and enjoyment of the facilities, goods, and
27 services of Defendant’s website in Ventura County. The access barriers Plaintiff
28 encountered on Defendant’s website have caused a denial of Plaintiff’s full and

1 equal access multiple times in the past, and now deter Plaintiff on a regular basis
2 from accessing Defendant's website. Similarly, the access barriers Plaintiff
3 encountered on Defendant's website have impeded Plaintiff's full and equal
4 enjoyment of goods and services offered at Defendant's brick-and mortar stores.

5 **THE AMERICANS WITH DISABILITIES ACT AND THE INTERNET**

6 14. The Internet has become a significant source of information, a portal,
7 and a tool for conducting business, doing everyday activities such as shopping,
8 learning, banking, researching, as well as many other activities for sighted, blind and
9 visually-impaired persons alike.

10 15. In today's tech-savvy world, blind and visually-impaired people have
11 the ability to access websites using keyboards in conjunction with screen access
12 software that vocalizes the visual information found on a computer screen. This
13 technology is known as screen-reading software. Screen-reading software is
14 currently the only method a blind or visually-impaired person may independently
15 access the internet. Unless websites are designed to be read by screen-reading
16 software, blind and visually-impaired persons are unable to fully and equally access
17 websites, and the information, products, and services contained thereon.

18 16. Blind and visually-impaired users of Windows operating system-
19 enabled computers and devices have several screen reading software programs
20 available to them. Some of these programs are available for purchase and other
21 programs are available without the user having to purchase the program separately.
22 Job Access With Speech, otherwise known as "JAWS," is currently the most
23 popular, separately purchased and downloaded screen-reading software program
24 available for a Windows computer.

25 17. For screen-reading software to function, the information on a website
26 must be capable of being rendered into text. If the website content is not capable of
27 being rendered into text, the blind or visually-impaired user is unable to access the
28 same content available to sighted users.

1 18. The ADA specifically provides, "No individual shall be discriminated
2 against on the basis of disability in the full and equal enjoyment of the goods,
3 services, facilities, privileges, advantages, or accommodations of any place of public
4 accommodation by any person who owns, leases (or leases to) or operates a place of
5 public accommodation." 42 U.S.C. §12182(a); 28 C.F.R. §36.201(a). The ADA
6 further requires that a public accommodation provide accessible electronic and
7 information technology as auxiliary aids and services. *See* 28 C.F.R. §36.303(a), (b)
8 and (c)(ii). Commercial websites that are not accessible for blind and visually-
9 impaired individuals using screen-readers and keyboards only, violate this basic
10 mandate of the ADA. *See National Federation of the Blind v. Target Corp.*, 452 F.
11 Supp. 2d 946 (N.D. Cal. 2006).

12 19. The Department of Justice (the "DOJ") has consistently stated its view
13 that the ADA's accessibility requirements apply to websites belonging to private
14 companies. *See, e.g., Applicability of the Americans with Disabilities Act (ADA) to*
15 *Private Internet Sites: Hearing before the House Subcommittee on the Constitution*
16 *of the House Committee on the Judiciary*, 106th Cong., 2d Sess. 65-010 (2000) ("It
17 is the opinion of the Department of Justice currently that the accessibility
18 requirements of the Americans with Disabilities Act already apply to private Internet
19 Web sites and services."); 75 Fed. Reg. 43460-01 (July 6, 2010) ("The Department
20 believes that title III reaches the Web sites of entities that provide goods or services
21 that fall within the 12 categories of 'public accommodations,' as defined by the
22 statute and regulations."). Thus, Defendant is on notice that the ADA's general
23 mandate applies to its website accessibility. *See Fortyune v. City of Lomita*, 766 F.3d
24 1098, 1102 (9th Cir. 2014); *Reich v. Mont. Sulphur & Chem. Co.*, 32 F.3d 440, 444–
25 45 (9th Cir. 1994).

26 20. The international website standards organization, the World Wide Web
27 Consortium, known throughout the world as W3C, has published version 2.0 of the
28 Web Content Accessibility Guidelines ("WCAG 2.0" hereinafter). WCAG 2.0 are

1 well-established guidelines for making websites accessible to blind and visually-
2 impaired people as well as other persons who require screen-reading technology to
3 use computers and access the internet. These guidelines are adopted and followed
4 by most large business entities who actively seek to ensure their websites are
5 accessible to people, including the blind and visually-impaired users.

6 21. Inaccessible or otherwise non-compliant websites pose common access
7 barriers to blind and visually-impaired persons. Common barriers encountered by
8 blind and visually impaired persons include, but are not limited to, the following:

- 9 a. A text equivalent for every non-text element is not provided;
- 10 b. Title frames with text are not provided for identification and navigation;
- 11 c. Equivalent text is not provided when using scripts;
- 12 d. Forms with the same information and functionality as for sighted
13 persons are not provided;
- 14 e. Information about the meaning and structure of content is not conveyed
15 by more than the visual presentation of content;
- 16 f. Text cannot be resized without assistive technology up to 200 percent
17 without loss of content or functionality;
- 18 g. If the content enforces a time limit, the user is not able to extend, adjust
19 or disable it;
- 20 h. Web pages do not have titles that describe the topic or purpose;
- 21 i. The purpose of each link cannot be determined from the link text alone
22 or from the link text and its programmatically determined link
23 context;
- 24 j. One or more keyboard operable user interface lacks a mode of
25 operation where the keyboard focus indicator is discernible;
- 26 k. The default human language of each web page cannot be
27 programmatically determined;
- 28 l. When a component receives focus, it may initiate a change in context;

- 1 m. Changing the setting of a user interface component may automatically
2 cause a change of context where the user has not been advised before
3 using the component;
- 4 n. Labels or instructions are not provided when content requires user
5 input;
- 6 o. In content which is implemented by using markup languages, elements
7 do not have complete start and end tags, elements are not nested
8 according to their specifications, elements may contain duplicate
9 attributes and/or any IDs are not unique;
- 10 p. Inaccessible Portable Document Format (PDFs); and,
- 11 q. The name and role of all User Interface elements cannot be
12 programmatically determined; items that can be set by the user cannot
13 be programmatically set; and/or notification of changes to these items
14 is not available to user agents, including assistive technology.

FACTUAL BACKGROUND

16 22. Defendant offers the commercial website, BabiesRUs.com, to the
17 public. The website offers features which should allow all consumers to access the
18 goods and services which Defendant offers in connection with its physical locations.
19 The goods and services offered by Defendant include, but are not limited to the
20 following, which allow consumers to: find information about the various items
21 Defendant offers to consumers for purchase; locate Babies R Us stores; purchase
22 Babies R Us gift cards; sign up for gift registries, as well as seek information
23 available for purchase about other goods and services offered by Defendant.

24 23. Based on information and belief, it is Defendant's policy and practice to
25 deny Plaintiff, along with other blind or visually-impaired users, access to
26 Defendant's website, and to therefore specifically deny the goods and services that
27 are offered and integrated with Defendant's stores. Due to Defendant's failure and
28 refusal to remove access barriers to its website, Plaintiff and visually-impaired

1 persons have been and are still being denied equal access to Babies R Us stores and
2 the numerous goods, services, and benefits offered to the public through
3 BabiesRUs.com.

4 **Defendant's Barriers on BabiesRUs.com Deny Plaintiff Access**

5 24. Plaintiff is a visually-impaired and legally blind person, who cannot use
6 a computer without the assistance of screen-reading software. However, Plaintiff is
7 a proficient user of the JAWS screen-reader and uses it to access the internet.
8 Plaintiff has visited BabiesRUs.com on several separate occasions using the JAWS
9 screen-reader.

10 25. During Plaintiff's multiple visits to Defendant's website, Plaintiff
11 encountered multiple access barriers which denied Plaintiff full and equal access to
12 the facilities, goods and services offered to the public and made available to the
13 public on Defendant's website. Due to the widespread access barriers Plaintiff
14 encountered on Defendant's website, Plaintiff has been deterred, on a regular basis,
15 from accessing Defendant's website. Similarly, the access barriers Plaintiff
16 encountered on Defendant's website have deterred Plaintiff from visiting
17 Defendant's brick-and-mortar stores.

18 26. While attempting to navigate BabiesRUs.com, Plaintiff encountered
19 multiple accessibility barriers for blind or visually-impaired people that include, but
20 are not limited to, the following:

- 21 a. Several graphics, links, and buttons are not labeled or are incorrectly
22 labeled, or lack alternative text ("Alt-text"). Alt-text is invisible code
23 embedded beneath a graphical image on a website. Web accessibility
24 requires that alt-text be coded with each picture so that screen-reading
25 software can speak the alt-text where a sighted user sees pictures. Alt-
26 text does not change the visual presentation, but instead a text box
27 shows when the cursor moves over the picture. The lack of alt-text on
28 these graphics prevents screen readers from accurately vocalizing a

1 description of the graphics;

- 2 b. After first typing in the URL “BabiesRUs.com” a screen-reader user
3 does not even hear anything about Babies R Us; only Toys R Us, which
4 is confusing for users. On the homepage, the first thing a screen-reader
5 user hears is “TRU Logo Graphic,” which the user hears as “True”
6 since it is read phonetically. After a several minutes and checking the
7 spelling, it is apparent that this was an abbreviation of Toys R Us, again
8 adding to confusion as to what website the user is actually on.
- 9 c. Throughout the website, there are incomprehensible coded links and
10 images that make navigating the website overwhelming and confusing.
11 For example, on the homepage, while scrolling down there is a coding
12 glitch where are several links that are repeated. On the homepage there
13 is a slideshow that is inaccessible. It contains with graphics that are
14 mislabeled with long strings of random characters, and at the end of
15 those characters the screen-reader user hears “slide 1” or “slide 2.”
16 There is no option to pause the slideshow or any other labeling
17 information.
- 18 d. Seemingly every graphic on the homepage is inaccessible and labeled
19 with random strings of characters that do not make sense.
- 20 e. The gift card section is inaccessible. When the screen-reader user hears
21 a link that says “what does the eGift card look like?” there is no
22 response when the user selects it. There is another link that says
23 “email.” Is this the user’s email or recipient’s email?” The calendar to
24 select a delivery date was also not accessible.
- 25 f. After entering a keyword into a search bar, the search results do not
26 have search results that offer navigational headings. Therefore, the
27 screen-reader user is forced to move line by line, and is forced to read
28 each item description and to try and decipher what each item is before

1 moving to the next item. This is very time consuming and tedious to
2 locate a single desired item.

3 g. After selecting an item and trying to find more specific information
4 about an item for sale, a screen-reader user hears “void (0) link,” then a
5 heading for details, but there are no actual details. Without access to
6 what an item is, what it looks like, or any description, a screen-reader
7 user is deterred from making purchases.

8 27. In 2015 and 2016, Plaintiff attempted to do business with Defendant on
9 BabiesRUs.com to shop for her infant son and Plaintiff encountered barriers to
10 access on BabiesRUs.com. In February 2017, Plaintiff again attempted to do
11 business with Defendant on BabiesRUs.com and Plaintiff encountered the same
12 barriers.

13 28. Despite past and recent attempts to do business with Defendant on its
14 website, the numerous access barriers contained on the website and encountered by
15 Plaintiff, have denied Plaintiff full and equal access to Defendant’s website.
16 Plaintiff, as a result of the barriers on the Babies R Us website, continues to be
17 deterred on a regular basis from accessing Defendant’s website. Likewise, based on
18 the numerous access barriers Plaintiff has been impeded from the full and equal
19 enjoyment of goods and services offered in Defendant’s stores and from making
20 purchases at such physical locations.

21 **Defendant Must Remove Barriers To Its Website**

22 29. Due to the inaccessibility of BabiesRUs.com, blind and visually-
23 impaired customers such as Plaintiff, who need screen-readers, cannot fully and
24 equally use or enjoy the facilities, goods, and services Defendant offers to the public
25 on its website. The access barriers Plaintiff encountered on Defendant’s website
26 have caused a denial of Plaintiff’s full and equal access multiple times in the past,
27 and now deter Plaintiff on a regular basis from accessing Defendant’s website. In
28 addition, the access barriers Plaintiff encountered on Defendant’s website have

1 deterred Plaintiff from visiting Babies R Us store locations.

2 30. If BabiesRUs.com was equally accessible to all, Plaintiff could
3 independently navigate these websites and complete a desired transaction as sighted
4 individuals do.

5 31. Through her many attempts to use Defendant's website, Plaintiff has
6 actual knowledge of the access barriers that make these services inaccessible and
7 independently unusable by blind and visually-impaired people.

8 32. There are readily available, well established guidelines, available to
9 Defendant on the Internet, for designing, constructing and maintaining websites to
10 be accessible to blind and visually-impaired persons. Other large business entities
11 have used these guidelines, or have otherwise been able, to make their websites
12 accessible, including but not limited to adding alt-text to graphics and ensuring that
13 all functions can be performed using a keyboard. In addition, incorporating these
14 basic changes and adding certain elements to Defendant's website would not
15 fundamentally alter the nature of Defendant's business nor would it result in an
16 undue burden to Defendant. Because maintaining and providing a website that is
17 equally accessible to all consumers, using the guidance of the success criteria
18 outlined by the WCAG 2.0 Guidelines, would provide Plaintiff and other visually-
19 impaired consumers with equal access to BabiesRUs.com, Plaintiff alleges that
20 Defendant has engaged in acts of intentional discrimination, including but not
21 limited to the following policies or practices:

- 22 a. Construction and maintenance of a website that is inaccessible to
23 visually-impaired individuals, including Plaintiff;
- 24 b. Failure to construct and maintain a website that is sufficiently intuitive
25 so as to be equally accessible to visually-impaired individuals,
26 including Plaintiff; and,
- 27 c. Failure to take actions to correct these access barriers in the face of
28 substantial harm and discrimination to blind and visually-impaired

1 consumers, such as Plaintiff, a member of a protected class.

2 33. Defendant therefore uses standards, criteria or methods of
3 administration that have the effect of discriminating or perpetuating the
4 discrimination of others, as alleged herein.

5 34. The ADA expressly contemplates the type of injunctive relief that
6 Plaintiff seeks in this action. In relevant part, the ADA requires:

7 “In the case of violations of . . . this title, injunctive relief shall include an
8 order to alter facilities to make such facilities readily accessible to and usable
9 by individuals with disabilities....Where appropriate, injunctive relief shall
10 also include requiring the . . . modification of a policy. . .”

11 (42 U.S.C. § 12188(a)(2).)

12 35. Because Defendant’s website has never been equally accessible, and
13 because Defendant lacks a corporate policy that is reasonably calculated to cause its
14 website to become and remain accessible, Plaintiff invokes the provisions of 42
15 U.S.C. § 12188(a)(2), and seeks a permanent injunction requiring Defendant to
16 retain a qualified consultant acceptable to Plaintiff (“Agreed Upon Consultant”) to
17 assist Defendant to comply with the ADA by making the website accessible, using
18 the success criteria outlined in the WCAG 2.0 guidelines as a source of reference.
19 Plaintiff seeks that this permanent injunction require Defendant to cooperate with
20 the Agreed Upon Consultant to:

- 21 a. Train Defendant’s employees and agents who develop the
22 BabiesRUs.com website on accessibility and compliance with the
23 ADA using the success criteria outlined in the WCAG 2.0
24 guidelines as a source of reference to allow all functions of the
25 website to be accessible to persons using screen-readers;
- 26 b. Regularly check the accessibility of Defendant’s website to
27 maintain its accessibility as required by the ADA using the
28 success criteria outlined in the WCAG 2.0 guidelines as a source

of reference to allow all functions to be accessible to persons using screen-readers;

- c. Regularly test end-user accessibility of the website by blind or visually-impaired users or other screen-reader users to ensure that Defendant's website is accessible to blind and visually-impaired individuals who would access the website with screen-reading software; and
 - d. Develop an accessibility policy that is clearly disclosed on its website, with contact information for users to report accessibility-related problems and be provided with meaningful resolution after Defendant has investigated and identified the accessibility-related problem.

36. If BabiesRUs.com was equally accessible to screen-reader users,

Plaintiff and similarly situated blind and visually-impaired people could independently locate Defendant's stores, view items that are available for purchase in Defendant's specific stores, shop for and otherwise research related products available via Defendant's website.

37. Although Defendant may currently have centralized policies regarding the maintenance and operation of its website, Defendant lacks a plan and policy reasonably calculated to make its websites fully and equally accessible to, and independently usable by, blind and other visually-impaired consumers.

38. Without injunctive relief, Plaintiff and other visually-impaired consumers will continue to be unable to independently use the Defendant's website in violation of their rights.

FIRST CAUSE OF ACTION

VIOLATIONS OF THE AMERICANS WITH DISABILITIES ACT OF 1990.

42 U.S.C. § 12181 *et seq.* [BABIESRUS.COM]

39. Plaintiff re-alleges and incorporates by reference all paragraphs alleged

1 above and each and every other paragraph in this FAC necessary or helpful to state
2 this cause of action as though fully set forth herein.

3 40. Section 302(a) of Title III of the ADA, 42 U.S.C. § 12101 *et seq.*,
4 provides:

5 “No individual shall be discriminated against on the basis of disability in the
6 full and equal enjoyment of the goods, services, facilities, privileges,
7 advantages, or accommodations of any place of public accommodation by any
8 person who owns, leases (or leases to), or operates a place of public
9 accommodation.”

(42 U.S.C. § 12182(a).)

10 41. Defendant’s stores are public accommodations within the definition of
11 Title III of the ADA, 42 U.S.C. § 12181(7). BabiesRUs.com is a service, privilege,
12 or advantage of Defendant’s stores. BabiesRUs.com is a service that is integrated
13 with these locations.

14 42. Under Section 302(b)(1) of Title III of the ADA, it is unlawful
15 discrimination to deny individuals with disabilities the opportunity to participate in or
16 benefit from the goods, services, facilities, privileges, advantages, or
17 accommodations of an entity. (42 U.S.C. § 12182(b)(1)(A)(i).)

18 43. Under Section 302(b)(1) of Title III of the ADA, it is unlawful
19 discrimination to deny individuals with disabilities an opportunity to participate in or
20 benefit from the goods, services, facilities, privileges, advantages, or
21 accommodation, which is equal to the opportunities afforded to other individuals.
22 (42 U.S.C. § 12182(b)(1)(A)(ii).)

23 44. Under Section 302(b)(2) of Title III of the ADA, unlawful
24 discrimination also includes, among other things:

25 “[A] failure to make reasonable modifications in policies, practices, or
26 procedures, when such modifications are necessary to afford such goods,
27 services, facilities, privileges, advantages, or accommodations to individuals
28 with disabilities, unless the entity can demonstrate that making such
modifications would fundamentally alter the nature of such goods, services,
facilities, privileges, advantages or accommodations; and a failure to take such

1 steps as may be necessary to ensure that no individual with a disability is
 2 excluded, denied services, segregated or otherwise treated differently than
 3 other individuals because of the absence of auxiliary aids and services, unless
 4 the entity can demonstrate that taking such steps would fundamentally alter
 5 the nature of the good, service, facility, privilege, advantage, or
 6 accommodation being offered or would result in an undue burden.”

7 (42 U.S.C. § 12182(b)(2)(A)(ii)-(iii).)

8 45. The acts alleged herein constitute violations of Title III of the ADA,
 9 and the regulations promulgated there under. Plaintiff, who is a member of a
 10 protected class of persons under the ADA, has a physical disability that substantially
 11 limits the major life activity of sight within the meaning of 42 U.S.C. §§
 12 12102(1)(A)-(2)(A). Furthermore, Plaintiff has been denied full and equal access to
 13 BabiesRUs.com, has not been provided services which are provided to other patrons
 14 who are not disabled, and has been provided services that are inferior to the services
 15 provided to non-disabled persons. Defendant has failed to take any prompt and
 16 equitable steps to remedy its discriminatory conduct. These violations are ongoing.

17 46. Pursuant to 42 U.S.C. § 12188 and the remedies, procedures, and rights
 18 set forth and incorporated therein, Plaintiff, requests relief as set forth below.

SECOND CAUSE OF ACTION

VIOLATION OF THE UNRUH CIVIL RIGHTS ACT, CALIFORNIA CIVIL

CODE § 51 *et seq.* [BABIESRUS.COM]

21 47. Plaintiff re-alleges and incorporates by reference all paragraphs alleged
 22 above and each and every other paragraph in this FAC necessary or helpful to state
 23 this cause of action as though fully set forth herein.

24 48. California Civil Code § 51 *et seq.* guarantees equal access for people
 25 with disabilities to the accommodations, advantages, facilities, privileges, and
 26 services of all business establishments of any kind whatsoever. Defendant is
 27 systematically violating the UCRA, Civil Code § 51 *et seq.*

28 49. Defendant's stores are "business establishments" within the meaning of

1 the Civil Code § 51 *et seq.* Defendant generates millions of dollars in revenue from
2 the sale of goods through its BabiesRUs.com website. Defendant’s website is a
3 service provided by Defendant that is inaccessible to patrons who are blind or
4 visually-impaired like Plaintiff. This inaccessibility denies blind and visually-
5 impaired patrons full and equal access to the facilities, goods, and services that
6 Defendant makes available to the non-disabled public. Defendant is violating the
7 UCRA, Civil Code § 51 *et seq.*, by denying visually-impaired customers the goods
8 and services provided on its website. These violations are ongoing.

9 50. Defendant's actions constitute intentional discrimination against
10 Plaintiff on the basis of a disability, in violation of the UCRA, Civil Code § 51 *et*
11 *seq.*, because Defendant has constructed a website that is inaccessible to Plaintiff,
12 Defendant maintains the website in an inaccessible form, and Defendant has failed to
13 take actions to correct these barriers.

14 51. Defendant is also violating the UCRA, Civil Code § 51 *et seq.* because
15 the conduct alleged herein violates various provisions of the ADA, 42 U.S.C. §
16 12101 *et seq.*, as set forth above. Section 51(f) of the Civil Code provides that a
17 violation of the right of any individual under the ADA also constitutes a violation of
18 the UCRA.

19 52. The actions of Defendant violate UCRA, Civil Code § 51 *et seq.*, and
20 Plaintiff is therefore entitled to injunctive relief remedying the discrimination.

21 53. Plaintiff is entitled to statutory minimum damages pursuant to Civil
22 Code § 52 for each and every offense.

23 54. Plaintiff is also entitled to reasonable attorneys' fees and costs.

PRAAYER

WHEREFORE, Plaintiff prays for judgment against Defendant, as follows:

27 1. A Declaratory Judgment that, at the commencement of this action,
28 Defendant was in violation of the specific requirements of Title III of the ADA 42

1 U.S.C. § 12181 *et seq.*, and the relevant implementing regulations of the ADA, for
2 Defendant's failure to take action that was reasonably calculated to ensure that its
3 websites are fully accessible to, and independently usable by, blind and visually-
4 impaired individuals;

5 2. A preliminary and permanent injunction enjoining Defendant from
6 further violations of the ADA, 42 U.S.C. § 12181 *et seq.*, and/or the UCRA, Civil
7 Code § 51 *et seq.* with respect to its website, BabiesRUs.com;

8 3. A preliminary and permanent injunction requiring Defendant to take the
9 steps necessary to make BabiesRUs.com readily accessible to and usable by blind
10 and visually-impaired individuals;

11 4. An award of statutory minimum damages of \$4,000 per violation
12 pursuant to § 52(a) of the California Civil Code;

13 5. For attorneys' fees and expenses pursuant to all applicable laws
14 including, without limitation, pursuant to 42 U.S.C. § 12188(a)(1), and California
15 Civil Code § 52(a);

16 6. For pre-judgment interest to the extent permitted by law;

17 7. For costs of suit; and

18 8. For such other and further relief as this Court deems just and proper.

19 **DEMAND FOR JURY TRIAL**

20 Plaintiff hereby respectfully requests a trial by jury on all appropriate issues
21 raised in this FAC.

23 Dated: August 9, 2017

MANNING LAW, APC

25 By: /s/ Joseph R. Manning Jr., Esq.
26 Joseph R. Manning Jr., Esq.
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